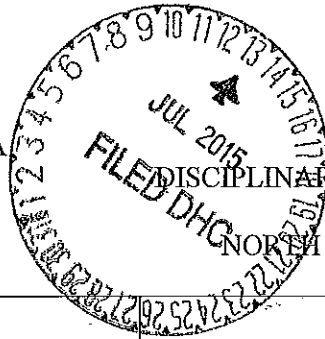


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 33

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MICHAEL C. STAMEY, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Michael C. Stamey ("Stamey" or "Defendant"), was admitted to the North Carolina State Bar on August 21, 1983, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Stamey was engaged in the practice of law in the law firm of Stamey & Foust, P.A., or subsequently as a sole practitioner in Jamestown, Guilford County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 - 3 are re-alleged and fully incorporated as if fully set out herein.

5. Dale Underhill ("Mr. Underhill") and Darrell Miller ("Mr. Miller") co-owned Showcase Homes, Inc. ("Showcase Homes"), which developed property and built residential homes in a subdivision in Winston-Salem, North Carolina.

6. Showcase Homes built a house for Mr. Miller and his wife on one of the lots (2450 Meadowpark Lane) in the subdivision.

7. In January 2007, Mr. Underhill and Mr. Miller entered into an agreement to dissolve their business relationship in Showcase Homes.

8. On February 16, 2007, Defendant served as the settlement agent for the closing on 2450 Meadowpark Lane.

9. In addition to other disbursements which Defendant made from the receipts at the closing, Defendant held \$34,681.16 in the Stamey & Foust BB&T Trust Account (ending in #2530) that was to be disbursed to the seller, Showcase Homes.

10. Because of a dispute between Mr. Underhill and Mr. Miller over their Showcase Homes dissolution agreement, the \$34,681.16 for Showcase Homes remained in the Stamey & Foust BB&T Trust Account.

11. In 2010, Mr. Miller brought a civil action against Mr. Underhill, *Darrell Miller v. Dale Underhill and Showcase Homes, Inc.*, No. 10-CVS-5422 (Forsyth Co. Sup. Ct.) ("the *Miller* lawsuit") regarding the Showcase Homes dissolution agreement.

12. Defendant represented Mr. Miller in the *Miller* lawsuit.

13. Defendant disassociated himself from the Stamey & Foust firm, and on May 20, 2011, Defendant opened his own New Bridge Bank Trust Account (ending in #4720) and New Bridge Bank Operating Account (ending in #4739).

14. Defendant did not immediately transfer the \$34,681.16 remaining in his former Stamey & Foust BB&T Trust Account to his new New Bridge Bank Trust Account.

15. An Order and Judgment was entered in the *Miller* lawsuit on March 12, 2012 by Superior Court Judge A. Moses Massey, who ruled that the dissolution agreement previously entered into by Mr. Underhill and Mr. Miller was legal and enforceable.

16. Judge Massey ordered that Mr. Underhill and Mr. Miller were to receive certain proceeds and reimbursements under their dissolution agreement, including \$20,345.87 to Mr. Underhill and \$14,335.31 to Mr. Miller from the \$34,681.16 remaining in the Stamey & Foust BB&T Trust Account.

17. Mr. Underhill and Mr. Miller made repeated demands of Defendant for payment of their sums owed, but Defendant did not make the disbursements as ordered.

18. On October 3, 2012, Defendant deposited to his New Bridge Trust Account a check in the amount of \$34,681.16 from his former Stamey & Foust Trust Account, representing the funds the court ordered to be disbursed to Mr. Underhill and Mr. Miller.

19. Because of Defendant's delay in disbursing the \$14,335.31 to Mr. Miller, Mr. Miller retained attorney Lawson Newton ("Mr. Newton") to obtain his disbursement from Defendant.

20. On December 1, 2012, Defendant issued a check from his New Bridge Bank Trust Account (Check No. 14089) in the amount of \$14,335.31 to Mr. Newton, on behalf of Mr. Miller, but misaddressed the check to Mr. Newton, causing the check not to reach Mr. Newton until on or about February 6, 2013.

21. The debit to Defendant's New Bridge Trust Account for Check No. 14089 posted on February 7, 2013.

22. Mr. Newton thereafter disbursed the \$14,335.31 to Mr. Miller.

23. Following the disbursement of the \$14,335.31 to Mr. Miller, a total of \$20,345.85 should have remained in Defendant's New Bridge Trust Account for the benefit of Mr. Underhill.

24. The balance of Defendant's New Bridge Trust Account dropped to \$18,358.75 on April 3, 2013, and the balance was \$6,049.17 as of March 31, 2014.

25. Defendant never disbursed to Mr. Underhill the \$20,345.87 in entrusted funds to which Mr. Underhill was entitled under Judge Massey's March 12, 2012 Order and Judgment.

26. Defendant misappropriated at least \$14,296.68 he held in trust for the benefit of Mr. Underhill and utilized those funds for his own benefit or for the use and benefit of a third person or entity without authorization to do so from Mr. Underhill.

27. Defendant failed to maintain client ledgers for entrusted funds, thereby failing to keep accurate records of the funds received and disbursed on behalf of his clients, including Mr. Miller.

28. Defendant failed to conduct quarterly reconciliations of his former Stamey & Foust Trust Account and his New Bridge Trust Account.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to identify, hold and maintain the entrusted funds from the Underhill/Miller settlement in his trust account, Defendant violated Rule 1.15-2(b);
- b) By misappropriating at least \$14,296.68 of Mr. Underhill's entrusted funds, Defendant used entrusted property for someone other than the legal or beneficial owner of that property, in violation of Rule 1.15-2(j);

- c) By failing to promptly make the disbursements to Mr. Underhill and Mr. Miller, Defendant failed to promptly pay or deliver entrusted property belonging to the owners and to which the owners were entitled in violation of Rule 1.15-2(m);
- d) By failing to respond to Mr. Miller's inquiries about the disbursement of the funds to which he was entitled, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- e) By misappropriating the funds belonging to Mr. Underhill, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- f) By failing to conduct quarterly reconciliations of his trust accounts, Defendant violated Rule 1.15-3(d); and,
- g) By failing to keep accurate records of the funds received and disbursed on behalf of his clients, Respondent violated Rule 1.15-3(b)(5).

SECOND CLAIM FOR RELIEF

29. Paragraphs 1 - 3 are re-alleged and fully incorporated as if fully set out herein.

30. Brad A. Kemmerer ("Mr. Kemmerer") and his wife retained Defendant as closing attorney for their mortgage refinancing in August 2012 on property located at 3401 Terrault Drive, Greensboro, North Carolina.

31. Following the closing and other disbursements, \$2,913.64 remained in Defendant's New Bridge Bank Trust Account (ending in #4720) for the benefit of the Kemmerers in order for Defendant to pay the Kemmerers' Guilford County property taxes on the refinanced property.

32. On August 17, 2012, Defendant disbursed check number 21822 from his New Bridge Trust Account payable to the Guilford County Tax Department in the amount of \$2,913.64 for payment of the Kemmerers' property taxes.

33. The check referenced a parcel number "0181999" but did not otherwise include the Kemmerers' identification; the parcel number for the Kemmerers' refinanced property was "0081999."

34. As a result of the incorrect parcel number, the Guilford County Tax Department mistakenly credited the tax payment to the tax bill for the owner of parcel "0181999" in the amount of \$1,157, instead of the Kemmerers' account, leaving the Kemmerers' tax bill unpaid.

35. On or about October 24, 2012, the Guilford County Tax Department issued a refund check (dated September 28, 2012, Check No. 479435) to Defendant's office in the amount of \$1,756.64.

36. The refund amount should have been deposited and held in Respondent's New Bridge Bank Trust Account as fiduciary funds on behalf of the Kemmerers, but instead was deposited into Defendant's New Bridge Bank Operating Account (ending in #4739) on November 7, 2012 and posted on November 8, 2012.

37. After receiving overdue property tax notices, in January 2013 Mr. Kemmerer contacted Defendant's office and received assurances that the unpaid property taxes would be corrected.

38. In February 2013, the Guilford County Tax Department credited the Kemmerers' account with the \$1,157 which had been mistakenly credited to another account.

39. Defendant or his office staff, acting on Defendant's behalf and with his authorization, made repeated promises to the Guilford County Tax Department that it would be disbursing a check for the balance due of \$1,756.64 on behalf of the Kemmerers.

40. Defendant never paid the balance due to the Guilford County Tax Department for the Kemmerers' unpaid taxes.

41. As a result of the unpaid balance on their tax bill, the Kemmerers eventually had to pay to the Guilford County Tax Department the balance due plus late charges and interest totaling \$1,876.41.

42. Defendant misappropriated \$1,756.64 which was held by Defendant for the benefit of the Kemmerers and utilized it for his own benefit or for the benefit of a third person or entity without authorization to do so from the Kemmerers.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to deposit the \$1,756.64 refund from the Guilford County Tax Department into his New Bridge Bank Trust Account, Defendant failed to identify, hold and maintain the Kemmerers' entrusted funds in his trust account in violation of 1.15-2(b);
- b) By misappropriating \$1,756.64 of the Kemmerers' entrusted funds, Defendant used entrusted property for his own personal benefit or for the personal benefit of another when neither Defendant nor the other were the legal or beneficial owner of that property, in violation of Rule 1.15-2(j), committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule

8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and,

- c) By failing to disburse the balance due to the Guilford County Tax Department on behalf of the Kemmerers, Defendant failed to promptly pay or deliver the entrusted property belonging to the client and to which the client was entitled in violation of Rule 1.15-2(m).

THIRD CLAIM FOR RELIEF

43. Paragraphs 1 - 3 are re-alleged and fully incorporated as if fully set out herein.

44. Louise Mabe Greene (Mrs. Greene) died on December 5, 2004.

45. Mrs. Greene owned property located at 301 Havenwood Drive, Archdale, North Carolina (the Archdale property), and owned property located at 4628 South Holden Road in Greensboro, North Carolina (the Greensboro property).

46. Mrs. Greene's daughter, Lori Dupre ("Ms. Dupre"), the Executrix for Mrs. Greene's estate, opened a file for the estate of Mrs. Greene in early 2005, *In Re The Estate of Louise Mabe Greene*, File No. 05-E-330 (Randolph Co. Sup. Ct.).

47. Defendant's friend, Terry R. Nall ("Mr. Nall"), doing business as SDT Development, LLC, offered to purchase Mrs. Greene's Archdale property.

48. Defendant agreed to close Mr. Nall's purchase of the Archdale property and to handle Mrs. Greene's estate for Ms. Dupre.

49. Defendant prepared the deed for SDT Development's purchase of the Archdale property, and the property was deeded to SDT Development by Ms. Dupre, on behalf of her mother's estate, on May 17, 2005.

50. SDT Development paid the estate \$100,000 for the Archdale property and Defendant disbursed to himself a fee of \$5,000 from the settlement proceeds.

51. In 2006, Mr. Nall, also doing business as Crown Title Insurance Company, Inc., expressed an interest in purchasing the Greensboro property.

52. On or about June 9, 2006, Defendant closed Mr. Nall's purchase of the Greensboro property, disbursing to himself a fee of \$3,000 from the settlement proceeds.

53. After he conducted the closings on the Archdale and Greensboro properties, Defendant failed to perform any legal services for the estate.

54. On August 23, 2006, a Deputy Sheriff served Ms. Dupre with a show cause order from the Clerk of Superior Court directing Ms. Dupre to appear before the

Clerk on September 13, 2006 to explain why she should not be held in contempt for failing to file required accountings for the estate.

55. Ms. Dupre contacted Defendant's office and received assurance from Defendant's staff that Defendant would file the required accounting for the estate.

56. Defendant made an appearance on Ms. Dupre's behalf on September 12, 2006, representing to the Clerk that he had been retained by Ms. Dupre to represent her in settling the estate and requesting a 90-day-extension of time to file the final accounting.

57. On September 13, 2006, the Clerk granted Defendant's request for a 90-day-extension of time to file the final accounting, and continued the show cause hearing until December 13, 2006.

58. On December 13, 2006, Defendant requested an additional 90-day-extension to file the final accounting, which the Clerk granted.

59. Defendant did not timely file the accounting, and on August 3, 2007 the Clerk issued a notice for Defendant to file the final accounting within thirty days.

60. On September 6, 2007, the Clerk issued another notice to Defendant to file the final accounting.

61. On October 9, 2007, the Clerk entered an order, copied to Defendant, directing Ms. Dupre to file the final accounting within twenty days.

62. On November 14, 2007, Defendant requested additional time to file the final accounting on behalf of Ms. Dupre.

63. On November 16, 2007, the Clerk granted Defendant an extension of sixty days to file the final accounting.

64. Over the course of the next five years, the Clerk issued numerous notices and orders for Defendant to file annual and final accountings for the estate.

65. Defendant failed to file the 2012 and 2013 annual accountings for the estate.

66. Defendant filed petitions to keep the estate open, but never filed the final accounting on behalf of the estate.

67. In or about 2012, Ms. Dupre arranged a meeting with Defendant, but when she arrived for the meeting Defendant was not present to meet with her.

68. Defendant's assistant promised Ms. Dupre she would reschedule the meeting between Ms. Dupre and Defendant, but Ms. Dupre never heard from Defendant or his assistant again.

69. In approximately July of 2013, Defendant abandoned his law practice and moved his client files, including Ms. Dupre's file, to a storage facility.

70. Defendant failed to give notice to Ms. Dupre that he was withdrawing from representing her prior to abandoning his law practice.

71. Defendant did not provide notice to the Clerk and did not obtain the permission of the Clerk to withdraw from representing Ms. Dupre in the estate matter.

72. Ms. Dupre attempted to obtain copies of her records on file with Defendant, but Defendant did not respond to her requests.

73. Ms. Dupre filed a grievance against Defendant with the State Bar on December 3, 2014, Grievance File No. 13G1137.

74. The State Bar served Defendant with a Letter of Notice in No. 13G1137 on January 24, 2014, informing him that he must submit a written response within fifteen days of the date of service.

75. On February 6, 2014, Defendant requested and was granted a one-week extension of time to respond to the Letter of Notice.

76. Defendant never submitted a response to the Letter of Notice.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to respond to the Letter of Notice, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- b) By failing to file the annual and final accountings for the Estate of Louise Mabe Greene, Defendant failed to act with reasonable diligence and promptness in representing Ms. Dupre in violation of Rule 1.3;
- c) By failing to communicate and meet with Ms. Dupre, Defendant failed to reasonably consult with his client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4), and failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b); and,
- d) By failing to give notice to Ms. Dupre of his abandonment of his law practice, by failing to obtain the permission of the Clerk to withdraw from his representation of Ms. Dupre, and by failing to provide to Ms. Dupre

her client file, Defendant failed to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation in violation of Rule 1.16(c), and failed to take steps to the extent reasonably practicable to protect his client's interests in violation of Rule 1.16(d).

FOURTH CLAIM FOR RELIEF

77. Paragraphs 1 - 3 are re-alleged and fully incorporated as if fully set out herein.

78. Defendant represented William P. Burger and his wife, Nina A. Burger ("the Burgers") in the June 2012 drafting of a Lease to Purchase contract with the Burgers' lessee, Rebecca McCall ("Ms. McCall").

79. The contract that Defendant drafted required Ms. McCall to purchase the property located at 3727 Harrington Point, High Point, North Carolina, within 12 months, or no later than December 2012.

80. Effective as of October 1, 2010, N.C. Gen. Stat. § 47G-2 provides for the minimum contents of an option contract.

81. The lease option purchase agreement Defendant prepared was executed by the parties on June 27, 2012, and therefore the requirements of N.C. Gen. Stat. § 47G-2 applied to the agreement.

82. The agreement drafted by Defendant did not contain any express default provisions or remedies as required by N.C. Gen. Stat. § 47G-2(b)(8), and did not contain an express statement of the purchaser's right to cancel the contract at any time until midnight of the third business day following execution as required by N.C. Gen. Stat. § 47G-2(b)(9).

83. The agreement as drafted by Defendant and as executed by the Burgers and Ms. McCall was not valid or enforceable since it was not in accordance with applicable legal minimum requirements.

84. Ms. McCall was late with her lease payments every month, was unresponsive to the Burgers, and vacated the property with no notice, leaving it in disrepair.

85. The Burgers asked Defendant for legal assistance.

86. Defendant advised the Burgers that he could not represent them because he drafted the original contract.

87. The Burgers hired another attorney and discovered that Defendant's contract, as drafted, had numerous errors and was not valid or legally enforceable.

88. Because of the unenforceability of the contract Defendant drafted, the Burgers suffered an estimated loss of over \$10,000.

89. The Burgers made numerous attempts to contact Defendant about their issues with the contract they paid him to prepare.

90. Defendant did not respond to the Burgers until the Burgers threatened to contact the State Bar about his conduct.

91. Defendant threatened to sue the Burgers if they contacted the State Bar.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to research or become aware of the requirements for a valid and enforceable lease option contract, Defendant failed to competently handle the Burgers' legal matter in violation of Rule 1.1, and failed to act with reasonable diligence and promptness in violation of Rule 1.3; and,
- b) By threatening to sue the Burgers if they contacted the State Bar, Defendant engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

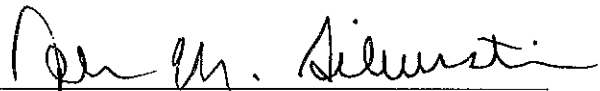
WHEREFORE, Plaintiff prays that:

(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;


(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

The 13th day of July, 2015.



John M. Silverstein, Chair
Grievance Committee



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